IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

CRP.No. 26 of 2005()

OPEA.148/2002 of ADDL.DISTRICT COURT,KOTTAYAM
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REVN. PETITIONER: IST RESPONDENT IN OP(EA):

THE KERALA STATE ELECTRICITY BOARD,
REP. BY ITS CHAIRMAN, VYDYUTHI BHAVABN, PATTOM,
THIRUVANANTHAPURAM.

BY ADV. SRI.KODOTH SREEDHARAN, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS: PETITIONER & 2ND RESPONDENT IN OP(EA):
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1. **K.V.THOMAS, S.O.VARKEY, AGED 75 YEARS,**
   KUNNATH PLASSANAL MURI, THALAPPALAM VILLAGE,
   MEENACHIL TALUK, KOTTAYAM.

2. **THE SPECIAL DEPUTY TAHSILDAR (LA),**
   K.S.E.B. KOTTAYAM.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

HARUN-UL-RASHID,J

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C.R.P.No.26 of 2005

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Dated this the 7th day of November, 2007

ORDER

This revision petition arise out of O.P.(EA) No.148/2002, on the file of the Additional District Court, Kottayam. The revision petitioner, relying on the decision reported in **K.S.E.B v. Livisha 2007 (3) KLT 1 (SC),** request the court to redetermine the compensation in accordance with the principles laid down in the said decision. Honourable Supreme Court in the said decision in para 11 and 12 stated the principles as follows:

> "11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case.
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> 12. We may, incidentally, refer to a recent decision of this Court in Land Acquisition Officer, A.P. v. Kamandana Ramakrishna Rao & Anr. reported in 2007 AIR SCW 1145 wherein claim on yield basis has been held to be relevant for determining the amount of compensation payable under the Land Acquisition Act, same principle has been reiterated in Kapur Singh Mistry v. Financial Commission & Revenue Secretary to Govt. of Punjab & Ors. 1995 Supp.(2) SCC 635, State of Haryana v. Gurucharan Singh & Anr. (1995 Supp.(2) SCC 637) para 4, and Airports Authority of India v. Satyagopal Roy & Ors.(2002) 3 SCC 527. In Airport Authority (supra), it was held:-
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> "14. Hence, in our view, there was no reason for the High Court not

> to follow the decision rendered by this Court in Gurucharan Singh's case and determine the compensation payable to the respondents on the basis of the yield from the trees by applying 8 years' multiplier. In this view of the matter, in our view, the High Court committed error apparent in awarding compensation adopting the multiplier of 18." "

2. The counsel for both sides submitted that the matter requires reconsideration on the basis of the Supreme Court decision and requested to afford an opportunity to adduce further evidence and produce such other materials to substantiate their contentions in the light of the said Supreme Court decision.

3. In the light of the said decision of the Supreme Court, the matter has to be reconsidered by the Court below and an opportunity has to be given to both sides to adduce evidence to establish proper compensation payable in the case. A redetermination of the said fact is necessitated on the basis of the principles laid down by the Supreme Court.

4. Therefore the order under challenge is set aside and the matter is remitted to the court below for fresh consideration after affording an opportunity to both sides to adduce evidence in support of their respective contentions.

Civil Revision Petition is disposed of accordingly.

HARUN-UL-RASHID, JUDGE

dvs